Notre Dame Law Review

Volume 19 | Issue 2 Article 2

12-1-1943

Indiana Jurisprudence--Mainly in Retrospect

Iden S. Romig

INDIANA JURISPRUDENCE—MAINLY IN RETROSPECT

ELBERT HUBBARD said—"A Court is a place where liars do congregate." As he was at Court at different times we will not gainsay his statement. But, more seriously, another has said that—"A Court is an organized body with definite powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, namely, attorneys and counsel, to present and manage the business, clerks to record and attest its acts and decisions and ministerial officers to execute its command and to secure order in its proceedings." And still another has said—"We must bear in mind that it is not the pulpit nor the press, but the law which reaches and touches every fibre of the whole fabric of life; which surrounds and guards every right of the individual; which keeps society in place; which embodies the good faith, holding the moral world together; which grasps the greatest and protects the least of human affairs; which is universal in its use and extent, accommodated to each individual, yet comprehending the whole community." This definition implies the existence of Courts for the construction of the law and the enforcement of it. If this comprehensive definition of the law and the functions of the Court are even in a small measure true, then an examination is always in order in every study of a community or people. If the law and its enforcement are on high plane in any community there is that one factor which speaks well for that community. The uncivilized have very little in the shape of laws and courts. The semi-civilized have them but in a cruder, more primitive form. The semi-savages of Australia and the Oceanic Islands had their councils with the headmen as the presiding genius. The tribal government of the Indians of North America is never based upon property but always upon kinship and the executive functions are performed by chiefs and they are members of the Council which is both legislature and Court.[1] The rectitude and completeness of their laws and the humaneness and correctness of their enforcement varied in accordance

1 Thomas, Social Origins—Page 834.

with the intelligence and advancement of the tribe. All civilized communities throughout all the ages have had some prescribed laws and some form of courts to construe and enforce them and the law forming body is known by the general term of legislature and its enforcing and construing body as the Court. Let us then survey briefly the history and present status of this community on this phase of its communal life. In this connection, since the law implies a Court and the Court as above stated must have a definite time and place for meeting, the organized Courts of this County, the Court Houses, the presiding geniuses, the important actors and participants in such proceedings are pertinent topics. But in order to get a complete understanding of this phase of our life, the changes which have been wrought, the progress we have made, if any, it will be necessary to dip back occasionally into the half century preceding the one just closing and comprising more than the full term of our existence as a separate County.

Ex. U. S. Senator Oliver H. Smith states that he was appointed prosecuting attorney in 1824 of what was then the Third Judicial Circuit of the State and included "What was then known as the Whitewater County extending from the County of Jefferson on the Ohio River north to the State Line of Michigan, some two hundred miles in length, and from the Ohio Line on the East to White River some seventy-five miles west." "The Circuit Court was composed of a President Judge, elected by the Legislature, who presided in all the Courts in the Circuit and two associate Judges elected in each county by the people. These 'side judges' as they were then called made no pretensions to any particular knowledge of the law, but still they had the power to over-rule the presiding judge and give the opinion of the Court, and sometimes they even outguessed the President." The presiding Judges were elected by the joint ballot of both branches of the General Assembly, and shall "hold their offices during the term of seven years if they shall so long behave well." They were to be paid $700.00 per annum under the law of 1831, and out of the State Treasury while the Associate Judges were to be paid $2.00 per day while attending Court, and out of the County Treasury.

Sen. Smith says that the Hon. Miles C. Eggleston was presiding Judge of this large Circuit, the Southern Court of

which was held at Vevay, and the Northern at Fort Wayne. Of the Country and its inhabitants he says: "The Country was new and sparsely settled. . . The population was hardy, fearless and generally honest but more or less reckless people such as are usually to be found advancing upon frontiers from more civilized life, and consequently there were more collisions among them, more crimes committed calling for the action of the Criminal Courts, than is common in older settled and more civilized parts of the older States." He said he heard nine men sentenced to the penitentiary and four to be hung which he prosecuted in one Circuit.

In those days there were no bridges over the streams but the Judges, Prosecutors and Circuit Riders rode good swimming horses and they never faltered on account of high water. Thus Gen. Noble rode his horse named "Wrangler"; Gen. McKinney his "McKinney Roan"; Gov. David Wallace, "Bell"; Amos Lane his "Big Sorrel"; Judge Eggleston his Indian Pony; Gov. Jas. B. Ray, "Red Jacket", and Smith his "Grey Fox."

The circuit Riders were the lawyers whose reputations as trial lawyers reached beyond their own counties and thus brought them retainers in the other parts of the Circuit and justified their riding with the Judge and Prosecuting Attorney. Abraham Lincoln was a conspicuous example of this class of lawyers. The term rarely lasted long, but each county was entitled to at least one term a year. Ex. U. S. Senator Jos. E. McDonald told of a clerk who got mixed as to the time when the Court would open and had it set a week ahead of time. Of course the Judge didn't appear and as there were no telephones, telegraph, fast mail or fast means of travel he could not ascertain the Judge's whereabouts or the reason for his non-appearance, so he entered upon his record: "Now cometh the day of Court but the Court cometh not." When the Judge appeared the next week, the Clerk didn't know what his record should be but the Judge suggested that he reverse the record which he did and caused it to read: "Now cometh the Court but the day of Court cometh not."

St. Joseph County was organized as a County August 27th, 1830. The first session of the Circuit Court was called October 22, 1832, and was presided over by the Hon. John R. Porter

of the first Circuit. It was held in the bar room of what was known as Calvin Lilly's Tavern which according to the St. Joseph County History by the late Judge T. E. Howard, was situated on the west side of South Michigan Street between Jefferson Boulevard and the first alley north.

At this Court, L. M. Taylor was Clerk, D. A. Fullerton, Sheriff, and the well-known names of Jonathan A. Liston, Elisha Egbert, A. Ingram, Thomas B. Brown, Wm. M. Jenners and C. K. Green were enrolled as the names of lawyers then admitted to practice. There were three causes on the docket for trial, a divorce, a libel and a state case against a woman for selling liquor to Indians. At this time St. Joseph County was a part of the first Circuit consisting of the Counties of Vermillion, Park, Montgomery, Fountain, Warren, Tippecanoe, Clinton, Carroll and Cass, and St. Joseph had two terms a year. In 1833, St. Joseph was placed with Carroll, Cass, Miami, Wabash, Huntington, Allen, LaGrange, Elkhart and LaPorte County, which constituted the 8th Circuit. In 1836, it was placed with Elkhart, Porter, Lake, Newton, Starke, Pulaski, Marshall, Fulton and Kosciuszko, constituting the 9th Circuit. It had two terms per year of one week each.

In 1851, the Associate Judges were discontinued, the Judge was elected by the people and for six years. The Constitution of the State of Indiana[2] provides: The Judicial power of the State shall be vested in a Supreme Court and in Circuit Courts and such other Courts as the General Assembly may establish.

In February, 1831, a Probate Court was provided for in each County whose duties related to decedents' estates, guardianships and related matters. It had its opening January 5th, 1832, and its sine die August 25th, 1852. The Circuit and Superior Courts now perform the duties of the Probate Court. The Statute however provides that under certain circumstances a County may create separate Probate Courts, but our County has never established one. We do, however, provide for a Probate Commissioner appointed by the Circuit Judge, who performs such duties as the Court may designate and thereby lightens and facilitates the work of the Circuit Judge.

A Common Pleas Court was established in 1851, and was

2 Sec. 168.

given the powers of the old Probate Court with certain other duties but it was abolished by the Act of March 6th, 1873.

In 1873, St. Joseph County was placed with LaPorte County and the two comprised the 38th Circuit and it had five terms of four weeks each. This was not changed until 1897 when it was placed in a separate circuit—the 60th Judicial Circuit.

In 1921 the Legislature created a Superior Court Number Two, the first incumbent being Fred C. Klein by appointment of the Governor, L. W. Hammond. He was followed by Judges Lenn J. Oare, Orlo R. Deahl, and J. Elmer Peak, the present incumbent.

The days of Circuit riding are plainly past. Judge Sample was Prosecuting Attorney before elected to the bench over the Circuit embracing Logansport, Fort Wayne, South Bend and the smaller counties between Fort Wayne, and Logansport and the Northern State line. It required three months for him to make the Circuit.

The first Court House built in the County of St. Joseph was contracted for in 1832 to be built in the Northeast corner of the Public Square at a cost of $3000.00.

This Square was given for Court House and Jail purposes by the Plattors of the town of South Bend and constituted what would be Lots 247, 248 and 249 Original Plat. The County later purchased the Lot to the South, Lot 250, and 44 feet off the North side of Lot 251, and the alley between Lots 249 and 250 has been vacated.

In 1853, a new Court House was ordered built by the Commissioner and it was completed in 1855. This served until October 31, 1896, when a contract was let for a new Court House which is the present county building. The Court House of 1853 was turned around to face South Lafayette Street, and is to the rear or West of its old location.

Other professions tell of advancements made in their fields, as particularly chemistry and medicine, where they have made wonderful advances to the extent that many former maladies usually fatal are now fully controlled, and the span

of human life materially increased. The question arises whether either the profession of the law or the status of courts has advanced over that of a century ago. There seems to be but one answer and that the negative one. By this statement we do not mean that there has been no advancement and no change in the administration of justice, and we will digress to show the change from the Common Law procedure to the Code. When we established community centers in this Country, we naturally took over the forms and customs of the Mother Country from which we came. England had for ages its Common Law and its Courts comprised the Common Law and Chancery Practice.

Judge Hogate quotes the Statute:—"In England the monuments and evidences of legal customs are contained in the records of the several courts of justice, in books of reports and judicial decisions, and in the treaties of the learned sages of the profession of the law, preserved and handed down from the times of the highest antiquity. It may also be said with much force that the common law of England, as handed down to us, has been supplemented and added to by what has been called "judicial legislation," so that the decisions of the courts of last resort in this state have become rules of property and guides for the conduct of the people in their personal and property rights, and in redressing the wrongs to their persons and property. The common law of England was a part of our jurisprudence, from the cession by Virginia in 1787 of the Northwest Territory, and the governor and judges of such Territory adopted it from the Virginia code. Indiana Territory, in 1807, adopted the common law of England, as it now stands on our statute books, and the same has so remained. In all matters arising in courts of justice in this state, where no statutory remedy or mode of procedure is laid down, the common law governs."

The Common Law procedure was a complicated and technical one. While it still prevails in some states and in the courts of the District of Columbia, there was a feeling among the people that the complexities of the Common Law should be eliminated in part at least. New York State led the procession, and in 1848 created with that end in mind what it called a "Code." Our State followed. The Hon. L. T. Mitch-

ener was Attorney General of the State of Indiana when the Hon. A. G. Porter was Governor, and he moved to Washington, D. C. to practice law after his office of Attorney General, and he told the writer that he did not attempt the trial of cases in the Common Law Courts of the District of Columbia because of the complexity of the Common Law practice. Yet Indiana was a Common Law State until the change to a Code State, as stated.

Judge Hogate quotes:—"There shall be no distinction in pleading and practice between actions at law and suits in equity; and there shall be but one form of action for the endorcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action." The above section of the statute was enacted in 1881, and prior to that time, in the code of 1852 the section read: "That the distinction between actions at law and suits in equity and the forms of all such actions and suits heretofore existing are abolished, and there shall be in this state, hereafter, but one form of action for the enforcement or protection of private rights, and the redress of private wrongs, which shall be denominated a civil action." This is some change in form but leaves the meaning substantially the same.

Originally the practice in this state was a close adherence to law and chancery as practiced in England. Actions were of three kinds, real, personal and mixed. Personal actions were divided into actions ex contractu and ex delicto. Actions ex contractu were, principally, assumpsit, covenant, debt and detinue. Ex delicto were case, trover, replevin and trespass. As is said by Mr. Justice Biddle: "The legislature cannot abolish the distinction between personal and real actions, nor between action to enforce a specific performance of a contract or recover a specific article, and those which seek merely a money judgment; nor between actions arising out of tort, and those founded upon contract; because the distinction exists in fact, and not in mere form. The distinction between the actions of debt, covenant, assumpsit, trover, trespass, trespass on the case, and suits in equity to recover money directly, may be and are abolished by the code, because the remedy sought in all these cases is the same—merely a money judgment." The legislature, in abolishing the distinction between actions at law and suits in equity, have done so only as to the form

of the action. It is a mode of procedure over which the legislature has plenary powers. It is not within the province of the legislature to abolish or abrogate the eternal principles of equity, any more than it could abolish the distinction between personal and real actions, for each are governed by their own special principles. In equity the course of proceeding was entirely different from the proceeding at law. There was but one form of bill, and in that the parties could set up any state of facts, which entitled them to equitable relief, and on a hearing the proper relief was rendered. At law there were as many forms as names for actions, and each was peculiar to itself. The code has swept both these systems away, and has adopted in place of them a system similar to the mode heretofore pursued in equity. This, however, does not involve a change of the rights of parties. A recovery can not now be had in a case where, before the change, he could not have recovered either in law or equity. The same essential facts must be charged and proven now as before the change. Nor is the remedy affected in actions at law or suits in equity, but simply the form of action by which to obtain the remedy.

As was said by Biddle, J.: "We no longer have courts of law and courts of equity. We do not send a party to a court of law to establish his rights in certain cases before he can resort to a court of equity. Whatever judgment he is entitled to upon the case made, he will receive, whether it be in law or equity. The mode of procedure is the same in all civil cases. This relieves from much of the old technical embarrassment which originally surrounded equity in its struggles to aid the law and enforce justice. Although the rule of law and the rule of equity must forever remain distinct from each other, because they are inherently different, yet they may now be administered together in the same court, in the same action, and at the same time."

It is true that many laws have been passed regulating the affairs of men since that time. The statutes of the state revised in 1881 constituted one volume of 1600 pages. We now have several volumes.

The Constitution (Sec. 172) provides that the Supreme Court shall upon decision of every case give a statement in writing of each question arising in the record of such case

and the decision of the Court thereon. There were in 1872 about 40 reports containing the decisions of the Supreme Court of the State while now we have more than 200, and we now have 111 reports of the Applelate Court, which Court was created in 1891 to lighten the labors of the Supreme Court.

We have seen how in 1872 we had one Circuit Court for this County and no Superior Courts and that Court was presided over by one Judge who presided over not only this County but eight others. In 1873 and thereafter until 1897 one Judge presided over St. Joseph and LaPorte, Counties.

You will see from the foregoing that we have made changes. But with all this, when a case is presented to Court the lawyers present it and their evidence along the same lines as controlled a hundred years ago. The admissibility of evidence or the inadmissibility of it depends upon rules deduced by logic which is changeless—the same today as it was in the days of Aristotle—while the more complex status of our social life brings many different kinds of facts before the Courts, yet the motives back of them which bring them to the front are the qualities of human nature and they change very little. Envy, malice, hatred, avarice, are the same today as they were ten thousand years ago, and these are the prime factors in human agencies which create need for more and more courts. To meet these the ingenuity of the lawyers was as ample fifty years ago as now. And Courts search now for motives as they did then; find them by the same rules and processes of reasoning and set up the same standards for their adjudication.

Thus the reasoning and consequent pleas of the lawyers, their appeals to the prejudices and weaknesses as well as honor of Jurors, as well as Judges, were as cogent then as now. There being less diversification, it is likely true that the lawyers of that time were as good if not better reasoners than now, and their pleas of finer diction and perhaps greater force. To go back about the beginning of the century and along into it down toward our present, the bar of this County as well as the surrounding counties had within its ranks men of outstanding prominence as lawyers, jurists and citizens. They were the foremost men of their communities and rightly so.

Their vocation was a profession, not a business, and their minds were master minds commanding respect everywhere.

The writer sat beside the late Judge Hubbard one evening at a lecture. While waiting for the speaker to arrive the Judge drew a pencil and paper from his pocket and began working a problem in higher mathematics. It was a drill of his mind which was already not only a mind trained in these higher and harder mental processes but a storehouse of knowledge. Judge Hubbard was a linguist, and made a trip to France to hear the French speak in their own language so that he might better acquire the use of the language. Judge Capron of Plymouth was a violinist; a man versed in Biblical lore: Judge Biddle of Logansport, in his beautiful island home, stuffed almost to suffocation with books, pictures and trophies of many climes, was a poet, an inventor and maker of musical instruments, collector and connoisseur in art. Judge Howard of this City was a writer, poet, historian, jurist and humanitarian. Col. Eddy was a physician, soldier and Secretary of State when he died in 1872. C. H. Reeve of Plymouth was a thinker of more than national reputation and said by many to know more of more things than any man they ever knew. Samuel Parker, member of our organization, was distinguished for his knowledge of history, particularly our Civil War history. And so we might go on naming many more equally entitled to mention.

It would be most interesting to note the many cases which have been tried in the courts of this County, but any one of several if properly treated, would require more space than this paper could take.

Perhaps no one subject has been the source of so many hard fought battles as the dam and water power rights. Judges Mitchell and Frazer, both of whom have been upon the Supreme Court bench of the State were Judge and Referee respectively in some of these cases. Judge Biddle, while a member of the Supreme Court came to South Bend and presided over cases growing out of Water Power Rights. It is rather generally known that South Bend was on the line of what is known as the Underground Railway and constituted a well-known passageway for slaves who had escaped to Michigan from their owners in the South. The Country near Cas-

sopolis was a well-known haven. One of the most celebrated law cases of this County was over a colored family named Powell who had clandestinely left their former location on the Ohio River, but claimed to be free. A white man named Norris claimed them as his chattels. After searching for them for about two years, he located them and with help from Kentucky caught them and undertook to take them through the City of South Bend. A Michigan neighbor of the Powells named Wright Maudlin followed them here and alarmed the people of South Bend. The citizens of South Bend turned out in great numbers and helped the colored folks secure a Writ of Habeas Corpus. The second day, about an estimated number of 75 to 200 colored persons arrived in South Bend from the colored section near Cassopolis. Different suits were instituted and either dismissed or terminated in various ways. Norris filed suit against several South Bend people for interfering with his capture of the Powell family. Norris then brought suit against these people and finally secured a judgment in the sum of $2856.00 in 1855. The United States Marshall sold a quantity of real estate owned by some of the parties sued to satisfy this judgment. It appeared that when Norris saw that he might have such a judgment against citizens of South Bend, he preferred the judgment to the possession of the slaves. Both Chapman's History and Judge Howard's History of St. Joseph County said that this was one of the most interesting cases ever tried in St. Joseph County.

There were several criminal cases which attracted much attention. And speaking of cases in court attracting attention, it is well to note that there is a great change in the past fifty years. The people generally do not attend court and care little for its proceedings. It was different a half century ago.

Senator Smith said: "The crowds at that day thought the holding of a Court a great affair. The people came hundreds of miles to see the Judges and hear the lawyers "plead" as they called it." But this attending Court was a custom which has prevailed in this community to far within the past fifty years.

There was a reason for this. The population was until very recently largely rural. Terms of school were of short duration; colleges were far apart and for the few; no rural

mails, no telephones, no theaters, no daily newspapers and not all the homes received weekly papers and very few magazines. The Court was not only their entertainment but their educator. The facts of the cases were interesting as any gossip, and besides they picked up knowledge not only along the lines of law but varied lines. Above all, they were entertained and amused by the sallies and pleas of the lawyers. If a lawyer could be one of the actors in a trial with the Court room crowded with spectators, he was put upon his mettle and did not purposely forego the opportunity of displaying his learning and forensic powers.

Justice Story of the Supreme Court wrote that William Pinckney and Samuel Dexter "have crowded houses; all the belles of the City have attended and have been entranced by the hours." A Mrs. Smith wrote: "One day Mr. Pinckney had finished his argument and was just about seating himself when Mrs. Madison and a train of ladies entered—he recommenced, went over the same ground, using fewer arguments, but scattering more flowers." While perhaps few lawyers have gone so far as Pinckney did, yet if "Pinckney, The Incomparable" could do this and before the Supreme Court of the United States, why should common mortals be blamed if they too cast an eye to the windward and rise in flights of oratory? Under circumstances, lawyers in every seat of justice and in every term of the Courts delivered themselves of Philippics which were models in eloquence.

The writer sat in our Court Room some years since when an honored member of this bar, now deceased, who was noted for his eloquence, in the course of his plea, pictured beautiful spring time—balmy air, budding flowers, green grass and singing birds at that Easter-tide—in eloquence worthy of the master that he was. The description true to the conditions which had existed for a few days preceding thrilled his auditors but was unfortunately not true to that day, for the weather had suddenly changed, and cold and snow were the order of the day. And still more unfortunately for him, he was opposed by Andrew Anderson—that honored nestor of our bar—that ready, resourceful antagonist of a thousand bloodless contests.

Mr. Anderson peered through the Court Room windows

and graphically and tersely described scenes as he beheld them and then told what was getting apparent to all listeners—that the other plea had been prepared a few days before, and then asking: "What matters it to this case whether the flowers are budding or frozen up? What do we care whether the birds are singing or shut up?" He proceeded to the arraignment of the facts. It was all a nice little drama, and interesting to all who were fortunate enough to see and hear it.

The late Judge Timothy E. Howard once related to the writer how a fellow jurist on the bench of the Supreme Court of this State had received his first inspiration to become a lawyer from attending a trial in his County Seat. This Judge told Judge Howard that he was living on a small farm tilling it in the summer and teaching school in the winter. He was married and had two children. One Saturday he took produce to market and there met an acquaintance who asked him if he had heard any of the trial. He answered that he had not. His friend told him that it was quite a trial and prominent lawyers, one of whom was Daniel W. Vorhees, later U. S. Senator from this State, and this resulted in their going to the trial and remaining all the rest of the day. That evening when he reached his home, he told his wife where he had been and that he had decided that he would study law. She chided him; told him that he had to make a living for themselves and the boys, and that he was crazy to think of such a thing. But he was undaunted and after discouragements which he related in detail to the Judge, he finally achieved signal success.

It may be interesting to note what Beveridge in his excellent work on "The Life of John Marshall" says about the attendance on the trial of Aaron Burr and the manners and dress of the attendants:

"On May 22, 1807, The House of Delegates in which the trial was to be held was densely crowded long before Judge Marshall took his seat and opened Court. So occupied was every foot of space that it was with difficulty that a passageway was opened through which the tall, awkwardly moving and negligently clad Chief Justice could make his way."

"The closely packed spectators accurately portrayed the dress, manners and trend of thought of the American people

of that period. Gentlemen in elegant attire—hair powdered and queues tied in silk, knee breeches and silver buckles, long rich cloth coats cut half way at the waist, ruffled shirts and high stocks—were conspicuous against the background of the majority of the auditors, whose apparel, however, was no less picturesque.

"This audience was largely made up of men from the smaller plantations, men from the mountains, men from the backwoods, men from the frontiers. Red woolen shirts; rough homespun or corduroy trousers, held by "galluses"; fringed deerskin coats and "leggings" of the same material kept in place by leather belts; hair sometimes tied by strings in uncouth queues, but more often hanging long and unconfined—in such garb appeared the greater part of the attendance at the trial of Aaron Burr.

"The good-sized square boxes filled with sand that were placed at infrequent intervals upon the floor of the improvised court-room were too few to receive the tobacco juice that filled the mouths of most of the spectators before it was squirted freely upon the floor and wall. Those who did not chew the weed either smoked big cigars and fat pipes or contented themselves with taking snuff. Upon recess or adjournment of court, all, regularly and without loss of time, repaired to the nearest saloons or taverns and strengthened themselves with generous draughts of whiskey or brandy, taken "straight" for a firmer, clearer grasp of the points made by counsel.

"Thousands of visitors had come from all over the country to witness the prosecution of that fallen angel whose dark deeds, they had been made to believe, had been in a fair way to destroy the Nation. The inns could shelter an insignificant fraction of them, and few were the private houses that did not take in men whom the taverns could not accommodate. Hundreds brought covered wagons or tents and camped under the trees or on the river-banks near the City."

Into the scenes of the Court rooms are perhaps crowded a greater range of the dramatic acts of human activities than in any other space of the same size in the world. Every observing attendant has there seen the realistic portrayal of every emotion of the human heart. They shift from tragedy to comedy, and range from the ludicrous, the ridiculous or

trifling, to the sublime—and every phase of human thought, feeling and emotion and without change of stage scenery—only the principal actors and many times very unwilling ones are changed. The powers of the passions which obsess human beings are all there exhibited as forcibly, exactly and realistically by untutored and untrained actors as any Booth or Barrett could portray. And while the observant could many times burst into uproarious laughter, he may be constrained from it by seeing the serious, perhaps tragic, effect upon one or more of the interested parties. And that is one of the peculiar features of litigations. It is usually serious to all participants, and as a rule one side must drink the dregs of defeat.

By the term Court we may refer to the Judge alone or may include Judge and Jury with other officers.

The Court in action implies not only the machinery created by the provision of the law but the respective operators of that machinery beginning with the different parties to the action who secure the attorneys and through them set the machinery to work along well established lines. By well established lines, we mean a set of rules determining the method of procedure, the facts admissable or not admissable in the given case and the final application of the law to these facts. These rules are the outgrowth of the wisdom and experience of the ages. The most casual observer must know that in the trial of a cause or grievance between litigants there must be a limit put upon the things and facts which can be brought before the Court. This line of cleavage is a scientific line. When applied to its true science it gives each party to the controversy the right to bring before the tribunal for its consideration all of the pertinent and relevant facts and prohibits the consideration of all irrelevant or extraneous matter. Without such rules there would be no end to the trial of grievances. We claim our system to be the sanest, fairest and most conducive to exact and proper results of all the system of Judicature.

Courts are not only the mediums of peace by providing an orderly, scientific and legalized method of settling the differences between people who can not determine them between or among themselves, and by construing, explaining and interpreting the meaning of a statute, but they are the peaceful

medium of transfer or transmutation of title to property from a deceased to his kin or the designated objects of his bounty. Without law prescribing the persons to whom and the proportions in which his property shall descend upon his demise, and Courts to control and enforce—it would be the property of the first comer or the strongest, regardless of relationship or merit and his closing hours would be the time for banditry, riot and force.

Courts are more. They are the arena in which have been fought the bloodless fights which have marked the milestones in the progress of civilization and the preservation of human rights and liberties. One only needs refer to the history of free speech, or free press, to say nothing of many other established and undisputed rights to prove this.

This paper does not mean that exact and definite justice is always the result of even this nicely constituted tribunal, for it is a human agency and hence fallible. Human weakness, human limitations, human prejudices are ever present. This applies occasionally to the deciding power but more often to the facts which must be depicted to the Court by human testimony. Nor is this always corrupt or perfidious, even in the witnesses who present the facts. The trick of memory in the person who means to be truthful; the viewing of but a part of an occurrence when he thinks he saw all; the unconscious drawing of a conclusion from what he saw and then seeing and relating facts consistent with these conclusions are more often than perfidy the cause of a miscarriage of justice.

* * *

There is another instance in which the court rid itself of a lot of intricate law by accepting the simple advice of the attorney on the other side. This occurred in the Franklin Circuit Court. The attorney for the plaintiff was one of the most learned men in early Indiana. He was a graduate of Yale and had an acquaintance with the legal learning of the old English authors at ready command. The defendant was represented by Gen. Noble, "who had been raised in the backwoods, educated in the winter-time and at nights, in a little log schoolhouse in Kentucky, but was armed with a large amount of common sense." The attorney for the plaintiff had before him an array of old English books and consumed a day

in reading decisions. The next morning Gen. Noble for the defendant said: "If the Court please, I shall not attempt to follow the learned gentleman in his long speech nor even read and comment on his authorities, they may all be well enough in the right place, in their proper jurisdiction, but they have no bearing whatever in this Court, in this jurisdiction. I have in my hand a book from which I will read a few extracts. The Court ———"

"What book is that, Gen Noble?"

"It is the Declaration of Independence."

"Yes, that is coming to the point. Read it, General."

The General then read the preamble to the Declaration of Independence which closes by stating: "And that all political connection between them and the State of Great Britain is and ought to be totally dissolved." The General ceased reading. The Court said: "That is conclusive. These British authorities were all cut off on the 4th day of July, 1776. Judgment for the defendant."

Iden S. Romig.